

CHAPTER 9

PROPERTY LAW

A. COMMUNITY/SEPARATE PROPERTY

Idaho is a “community property” state which means the husband and wife are equal partners in a marriage and both are to share equally in the marital assets and debts. Property is categorized as either community property or separate property. Generally, all property acquired prior to marriage and any property received as a gift or inherited during the marriage is the separate property of the spouse who received it. With some exceptions, all other property is community property and to be shared equally by both parties to the marriage.

Generally, all earnings of either spouse during the marriage are community assets and generally debts of either spouse incurred during the marriage are community debts. An exception may exist if one spouse does not know about the debt. Because other exceptions and subtleties exist, questions as to whether property or debts are separate or community should be resolved with the assistance of an attorney.

Both husband and wife have the right individually to manage and control the community assets and to incur community indebtedness. However, both husband and wife must consent to the sale of the community home or other community real estate.

Debts incurred during the marriage, even while the spouses are separated, are community debts. Generally, both spouses are responsible for repayment. Although a court decree or an agreement between the spouses requires one spouse to assume responsibility for repayment, both spouses remain legally responsible to the creditor.

Any property, whether community or separate, may be divided in a voluntary settlement between husband and wife. Such an agreement can be signed at any time during the marriage, if the parties are separated, or as part of a divorce proceeding. Because a property settlement signed by both spouses is generally a binding agreement upon the parties executing it (absent circumstances of fraud or overreaching), care must be exercised in signing such an agreement.

B. PROPERTY SUBJECT TO COLLECTION BY TAXING AGENCIES

Idaho, unlike some community property states, allows taxing agencies and other creditors to seize community property to satisfy a premarital debt of only one spouse. Therefore, if you marry someone who already owes taxes, what you earn or acquire during marriage may be seized to satisfy your spouse’s premarital tax debts.

If your spouse has an unpaid child support obligation, the Internal Revenue Service and the Idaho State Tax Commission may collect your tax refund at the request of the State Department of Health and Welfare. This usually occurs when you file a joint tax return with your spouse, even if the entire refund is derived from taxes withheld from your wages.

Taxing agencies may also seize your refund to satisfy other outstanding federal and state obligations, such as student loans and court restitution orders. If your tax refund is seized to satisfy a nontax debt, you must contact the agency involved for information concerning whether any portion of your tax refund will be returned.

For further discussion on Property Law, please see Chapters 7, 8, 9 and 11 of this booklet.